



MONTANA  
TELECOMMUNICATIONS  
ASSOCIATION

*Ex Parte Notice:* April 29, 2013

Ms. Marlene Dortch, Secretary  
Federal Communications Commission  
455 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

RE: *Healthcare Connect Fund*, WC Docket No. 02-60; *Lifeline and Link Up Reform and Modernization*, WC Docket Nos. 11-42 and 03-109 and CC Docket No. 96-45; *Rural Call Completion*, WC Docket Nos. 07-135, 11-39 and 13-39, and CC Docket No. 01-92

Dear Ms. Dortch,

On April 22 and 23, 2013, the undersigned on behalf of the Montana Telecommunications Association (MTA) met with Nick Degani, legal advisor to Commissioner Pai, and Priscilla Argeris, legal advisor to Commissioner Rosenworcel, to discuss Lifeline Program reforms, Rural Health Care (Healthcare Connect) Program reforms, and rural call completion. The undersigned also discussed Rural Health Care and Lifeline reforms with Trent Harkrader, Kim Scardino and Linda Oliver of the Wireline Competition Bureau on April 23.

With regard to Rural Health Care (Healthcare Connect) reforms, MTA supports the Motion for Reconsideration filed by USTelecom on April 1, 2013. Specifically, MTA concurs with USTelecom's request that the Commission "reconsider permitting and encouraging the speculative installation and resale of excess capacity." As USTelecom points out,

By 'sharing' excess capacity for a fee with ineligible users, which could include, for example, non-health care, for-profit businesses, the HCP is reselling network capacity in violation of the statute...Congress clearly contemplated the scenario of an HCP retaining ownership of the network capacity while leasing use of the network capacity to another...Similarly, the statute does not create a carve-out for HCPs that use the payments from reselling network capacity to others in a certain manner or for HCPs that charge a certain amount for their excess network capacity.<sup>1</sup>

MTA also supports USTelecom's assertion that "Dark fiber is not eligible for support under §254(h)(1)(A) or (h)(2)(A) of the Act as it is neither a telecommunications service,

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<sup>1</sup> *In the Matter of Rural Health Care Support Mechanism*. WC Docket No. 02-60. Petition for Reconsideration and Clarification of the United States Telecom Association. April 1, 2013. pp. 3-4.

advanced telecommunications service nor an information service” and as such It “cannot be included in the permissible uses of HCF funding...”<sup>2</sup>

Additionally, MTA discussed the Wireline Competition Bureau’s Request for Comments on Healthcare Connect Fund Forms 460, 461, 462, and 463.<sup>3</sup> MTA urges the Commission to observe certain principles in reviewing these forms:

- Public notice of HCP RFPs should be as transparent and visible as possible. Interested stakeholders, including potentially interested stakeholders, should be given every opportunity to receive notice of HCP plans to apply for and/or receive Healthcare Connect funds, especially those that may involve construction projects. MTA is concerned that posting RFPs on USAC’s web site may be too passive. Stakeholders should not be expected simply to divine when or where a Healthcare Connect project is planned that may affect them either positively or negatively. The burden should be placed on the HCP to ensure that all reasonable measures have been undertaken to ensure that the maximum number of potential stakeholders are aware of the HCP’s plans.
- Any projects that contemplate funding for construction should exhaust all options in considering whether construction in fact is the least cost alternative.<sup>4</sup> Again, the burden should be on the HCP to develop an RFP which fully explores all options before justifying any support for construction funds. For example, instead of seeking bids for an RFP for 100 miles of fiber, perhaps only 10 miles of construction would do. Similarly, perhaps a consortium of vendors rather than a single vendor would be the optimal use of vendors to minimize or obviate the need for construction. And as noted above, the burden should be on the RHP to explore all possible options for solving its network needs.

With regard to the Lifeline Program, MTA observes that the *Lifeline Reform Order*<sup>5</sup> appears to be yielding substantial, positive savings in the growth rate of Lifeline demand. Despite these positive results, the Lifeline Program is the only one of the four universal service programs that is not subject to a budget. Moreover, there is reason to believe that the savings from the Reform Order will “bottom out” at some point in the foreseeable future and Lifeline fund demand will begin to grow again. Among other reasons for a return to growth are: continued entry into the program by prepaid wireless

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<sup>2</sup> *Id.* p. 5.

<sup>3</sup> “Wireline Competition Bureau Seeks Comment on Healthcare Connect Fund FCC Forms 460, 461, 462, and 463.” Public Notice. DA 13-590. Rel. April 1, 2013.

<sup>4</sup> MTA does not concede that the construction program is authorized by the Telecommunications Act, as indicated above in MTA’s support of USTelecom’s Motion for Reconsideration.

<sup>5</sup> In the Matter of *Lifeline and Link Up Reform and Modernization, et al.* WC Docket Nos. 11-42, 03-109 and 12-23, and CC Docket No. 96-45. Report and Order and Further Notice of Proposed Rulemaking. FCC 12-11. Released: February 6, 2012.



CETCs; lifeline participation is around 55% and further participation can be anticipated; Link Up has been mostly eliminated so further savings cannot be extracted; the program is expected to expand to include broadband access; the eligibility base has been expanded to include other federal assistance programs; *inter alia*.

As MTA has asserted in previous comments, the level of support for Lifeline providers is analogous to the high-cost program “identical support” mechanism, which the FCC has eliminated in the *Transformation Order*.<sup>6</sup> MTA therefore recommends a \$3 per subscriber default level of support for prepaid wireless Lifeline-only ETCs, especially considering that the Commission has waived any facilities requirements for these providers. If a provider wishes to contest the default support level, the provider may submit sufficient cost data to the Commission to justify an alternative level of support. MTA’s recommendation would reduce the size of the Lifeline fund while serving the same number of eligible consumers; or, if the fund were capped at today’s spending level, it would provide room for additional subscribership and/or broadband access while not increasing further demand on the fund.

Finally, with regard to rural call completion, MTA observes that the problem of long distance calls failing successfully to terminate on rural networks continues, despite the recent *Level 3 Consent Decree*.<sup>7</sup> MTA commends the Commission for actions taken so far. Yet, more needs to be done to ensure that companies that fail to ensure the completion of calls that they carry face consequences for their behavior. In this regard, MTA hopes that the Rural Call Completion NPRM<sup>8</sup> will result in further progress. However, MTA is concerned that the NPRM effectively exempts originating long-distance call providers that make fewer than 100 call attempts to a single terminating company in a one-month period.<sup>9</sup> There are several small rural local exchange carriers that do not receive 100 call attempts from companies observed to circumvent their obligation to ensure calls complete on these terminating networks. The 100-attempt threshold therefore lets these originating long-distance call providers get away with continued violation of their obligations as provided by the *Call Termination Declaratory Ruling*,<sup>10</sup> among other rules and statutes.

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<sup>6</sup> *In the Matter of Connect America Fund, et al.* WC Docket Nos. 10-90, 07-135, 05-337, etc. Report and Order and Further Notice of Proposed Rulemaking. FCC 11-162. Released: November 18, 2011.

<sup>7</sup> *In the Matter of Level 3 Communications, LLC.* File No.: EB-12-IH-0087, et al. DA 13-371. Released: March 12, 2013.

<sup>8</sup> *In the Matter of Rural Call Completion.* WC 13-39. Notice of Proposed Rulemaking. FCC 13-18. Released: February 7, 2013.

<sup>9</sup> *Id.* e.g., ¶ 20.

<sup>10</sup> *In the Matter of Developing an Unified Intercarrier Compensation Regime; and Establishing Just and Reasonable Rates for Local Exchange Carriers.* CC Docket No. 01-92 and WC Docket No. 07-135. DA 12-154. Released: February 6, 2012.



Ms. Marlene Dortch  
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Ex Parte Notice of the Montana Telecommunications Association  
Re: Rural Health Care, Lifeline and Call Completion ex parte

MTA supports the proposed “ring signaling integrity requirements” in the Rural Call Completion NPRM and plans to submit more detailed comments in response to the NPRM.

Respectfully submitted,

/s/

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